IN THE HIGH COURT OF BOMBAY AT GOA

SECOND APPEAL NO. 44 OF 2005

SHRI BALKRISHNA V. NAIK AND ANR. ....Appellants

Versus

SHRI SURESH J. NAIK AND 3 ORS. ....Respondents

Mr. S. D. Lotlikar, Senior Advocate with Ms. K. Sambari, advocate for the appellants.
Mr. D. Pangam advocate for the respondent nos.1 to 4.

Coram:- R. M. LODHA, J.

Date:- 1st September, 2005

P.C.

Heard Mr. S. D. Lotlikar, the learned Senior Counsel for the appellants and Mr. D. Pangam, the learned counsel for respondent nos.l to 4.

Both the courts below have appreciated the evidence on record and disbelieved the plaintiff's case that they were in exclusive possession of the subject property surveyed under no.181/1 situated at Pirna, Bicholim. The defendants' case that the subject property had come to their share by virtue of oral partition has also been disbelieved by the courts below. The property being in joint possession, the dismissal of the plaintiffs' suit for injunction by the courts below cannot be said to suffer from any error of law.

The whole case depends on the appreciation of oral evidence and both the courts below have on proper appraisal of the said evidence dismissed the plaintiffs' suit.

No substantial question of law arises in this Second Appeal.

The Second Appeal is accordingly dismissed in limine.

However, it is clarified that either of the parties may pursue the remedy for partition of the subject property or declaration of title in appropriate proceedings.

R. M. LODHA, J.